



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
FEC Press Office
FEC Public Records

FROM: Marjorie W. Emmons/Delores Hardy *DN*
Secretary of the Commission

DATE: July 10, 1996

SUBJECT: COMMENTS: PROPOSED AO 1996-25

Transmitted herewith is a timely submitted comment from Ms. Margaret E. McCormick.

Proposed Advisory Opinion 1996-25 will be on a future agenda.

Attachment:

3 pages

American Federation of Labor and Congress of Industrial Organizations



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July 8, 1996

Mr. Larry Noble, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

RE: FEC Advisory Opinion Request
1996-25

Dear Mr. Noble:

I am writing on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") to comment on the position taken in Draft Advisory Opinion 1996-25. We disagree with the position taken by the draft advisory opinion in two respects:

1. The draft advisory opinion suggests that the Seafarers Political Activity Donation ("SPAD"), the separate segregated fund of the Seafarers International Union, should be required to report inaccurate information regarding the employment of merchant mariners contributing to the Committee on its FEC reports.

As the Advisory Opinion Request makes clear, the merchant mariners who contribute to SPAD via vacation plan check-off make such contributions between trips and thus are unemployed at the time that the contribution is made. That being the case, there is no basis in either the Act or the Commission's regulations for the Commission to require that SPAD report the employer of the merchant mariners as anything other than "none".

In the interests of fuller disclosure, SPAD has voluntarily offered to report the employer of its merchant marine contributors as "various U.S. flag vessel operators". We submit that SPAD's description of the merchant mariner's employers is more accurate and leads to just as much disclosure as to the source of the contributions being made to SPAD as the alternative proposed in the draft advisory opinion which would require SPAD to report a merchant mariner's most recent past employer.

2. We strongly disagree with the position taken on page 5 of the draft Advisory Opinion that the "best efforts rule" in the Commission's regulations does not apply to the separate segregated funds of unions and stock corporations. There is no basis in the legislative history, the Act, or the Commission's regulations for that position.

Section 432(i) of the Federal Election Campaign Act ("the Act") expressly provides that:

When a treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit information required by the Act for the political committee, any report or any records of such committee shall be considered in compliance with this Act....

And Section 104.7 of the Commission's regulations states that:

(a) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain, and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act. [11 C.F.R. §104.7]

The term "political committee" as defined in the Act and in the Commission's regulations includes any separate segregated fund. See 2 U.S.C. 431(4)(B), 11 C.F.R. §100.5(b). Thus, there is no basis in the Act or in the Commission's regulations for the draft advisory opinion's conclusion that the "best efforts rule" applies to some separate segregated funds and not to others.

Nor is there any basis, either in fact or in law for the draft advisory opinion's conclusion that certain separate segregated funds such as those sponsored by labor organizations have more

"access to information about contributors" than do other separate segregated funds such as those sponsored by trade associations or membership organizations.

The fact is that labor organizations' are no more likely to have easily accessible information about their members' employers than any other membership organization. Moreover, even if this were not the case, there is no statutory basis for excluding labor organizations or stock corporations from the "best efforts rule".

For the reasons outlined above, the AFL-CIO urges the Commission to reject the approach taken in draft advisory opinion 1996-25.

Sincerely,



Margaret E. McCormick
Associate General Counsel